



# OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301

**Administration  
& Management**

February 24, 1989

## ADMINISTRATIVE INSTRUCTION NO. 37

Subject: Employee Grievances

References: (a) Administrative Instruction No. 37, subject as above,  
August 12, 1981 (hereby canceled)  
(b) Office of Personnel Management Regulations,  
FPM, Supplement 990-1, 5 CFR Part 771  
(c) Federal Personnel Manual, Chapter 771  
(d) through (h), see enclosure 1

### A. REISSUANCE AND PURPOSE

This Instruction:

1. Reissues reference (a).
2. Updates established policy and guidance in presenting employee grievances.
3. Issues grievance procedures and guidance for civilian employees, as required by references (b) and (c).
4. Establishes procedures and guidance for grievances pertaining to Performance Management and Recognition System (PMRS) and Performance Management System (PMS) employees performance appraisal ratings of less than fully successful, and merit promotion grievances.

### B. APPLICABILITY

1. This Instruction applies to the Office of the Secretary of Defense (OSD), the Joint Staff, and all other activities receiving administrative support from Washington Headquarters Services (WHS) (hereafter referred to collectively as "OSD Components").
2. This Instruction applies to all nonbargaining unit employees, regardless of the nature of the employee's assignment.
3. It does not apply to:
  - a. A noncitizen appointed under Civil Service Rule VIII, Section 8.3., part 8, Civil Service Rules.
  - b. An alien appointed under title 22, United States Code, Section 1471(5).

c. An employee paid from funds , as defined in Title 5, United States Code, Section 2105 (c) (Nonappropriated Fund employees).

d. A member of a bargaining unit to which exclusive recognition has been granted by the Federal Labor Relations Authority.

e. An applicant for employment,

c. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

D. GRIEVANCE COVERAGE . .

1. This Instruction covers a request by a employee, or a group of employees, for personal relief in such matters as working conditions, improper rating and ranking of a candidate for merit promotion, lack of opportunity for overtime, a change in assignment, an admonishment, a reprimand, a suspension for 14 days or less, failure of a supervisor to establish critical elements and performance standards, and a performance appraisal rating of less than fully successful for GS/GM and wage system employees.

2. This Instruction does not cover:

a. A decision which is appealable to the Merit Systems Protection Board (MSPB) or subject to final administrative review by the Office of Personnel Management (OPM) or the Equal Employment Opportunity Commission (EEOC), under law or regulation of the MSPB, OPM, or EEOC.

b. Discrimination complaints of alleged bias or unfairness as a result of an employee's race, color, religion, sex, age, marital status, national origin, or physical or mental handicap (Administrative Instruction No. 9, reference (d)).

c. Adverse actions (such as reductions in grade or pay, suspensions for more than 14 days, furloughs of 30 days or less, removal or reduction in grade, or the withholding of within grade salary increases). Such actions are appealable to the MSPB.

d. Reduction-in-force actions (Administrative Instruction No. 71, reference (e) ) .

e. Position classification decisions and any resulting actions covered by the Position Classification Appeals procedure (Administrative -Instruction No. 66, reference (f)).

f. Actions directed by the OPM, MSPB, or EEOC.

g. Actions taken 'for security reasons under E. O. 10450 (reference (g)).

h. The content of published OSD Component regulations and policy, except as they are applied to an employee which, through mis interpretation or misapplication of any law, rule, or regulation, affects the conditions of employment.

i. Nonelection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion. This includes the decision not to promote an employee noncompetitively, such as, an employee in a career ladder-type position, or the selection or nonelection of an employee with ~~repromotion~~ priority.

j.. Agrievance covered by procedures established under a collective bargaining agreement pursuant to Title 5, United States Code, Section 7121.

k. A preliminary warning or notice of an action which, if effected, would be covered under the grievance system (notices of proposed adverse actions, such as, reprimands, suspensions of 14 days or less, and oral warnings).

l. A return of a Senior Executive Service (SES) career appointee to the General Schedule or another pay system during the 1-year period of probation, or for less than fully successful executive performance under Title 5, United States Code, Section 3592.

m. A reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under Title 5, United States Code, Section 4314.

n. An action that terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted; or an action that reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted, unless the termination is based on misconduct or unacceptable performance.

o. An action that terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay, provided that the return is not based on misconduct or unacceptable performance.

p. The substance of critical elements and performance standards established by a supervisor for an employee's position. The supervisor's failure to identify critical elements and to establish performance standards for an employee, or an employee's performance rating which is less than fully successful, are grievable under this Instruction.

q. The granting of or failure to grant or recommend a PMS employee performance award, or the adoption or failure to adopt an employee suggestion or invention, or the granting of or failure to grant or recommend an award of the rank of meritorious or distinguished executive in the SES.

r. The receipt of or failure to receive a performance award (SES bonus) or a quality salary increase.

s. A decision to grant or not to grant a general increase, a merit pay increase or a performance award under the PMRS, or a decision on the granting of or failure to grant a cash award or honorary recognition.

t. The termination of a probationer for unsatisfactory performance or misconduct.

u. The termination of an SES career appointee during probation for unacceptable performance.

v. A performance evaluation and rating for a member of the SES.

w. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee that assigns the employee from one geographical location to another or returns an employee from an overseas assignment.

x. The return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to complete satisfactorily the probationary period.

y. An action that terminates temporary employment or the separation of a noncareer executive or Schedule C employee.

z. A separation action not otherwise excluded above and not appealable to the MSPB or subject to final administrative review by OPM or EEOC under law or the regulations of OPM or EEOC.

#### E. POLICY

1. Employees shall be treated equitably. Those who feel that they have not been so treated have a right to present their grievance to appropriate management officials for prompt consideration and equitable decision.

2. Employees and their representatives, if any, shall be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance.

3. A GS/GM or wage system employee may grieve his or her receiving a less than fully successful performance rating. However, if that employee files an appeal concerning any personnel action resulting from that rating, such as to the MSPB or the EEOC, that rating no longer comes under the coverage of the administrative grievance procedure. No further action or processing of the employee's grievance concerning his or her receiving a less than fully successful rating will be taken after the date the employee files an appeal with an agency such as the MSPB or the EEOC.

4. Impartial and prompt consideration shall be given to all grievances. Employee grievances shall be resolved informally at the lowest possible supervisory level and as early as possible after being made known to the supervisor.

#### F. RESPONSIBILITIES

1. The Director of Personnel and Security (P&S), WHS or the Civilian Personnel Officer (CPO), Joint Staff, as appropriate, shall:

a. Develop and administer a grievance system that complies with OPM regulations.

- b. Provide employees an opportunity to express their views.
- c. Make this Instruction available to employees, their representatives, and others.
- d. Provide guidance and assistance to supervisors, deciding officials, OSD Component heads, and employees, and assure a timely and equitable resolution of grievances.
- e. Determine if a grievance is properly presented and is an appropriate matter for consideration.
- f. Establish the method of selecting grievance examiners, assure that they are properly trained, and assign them to specific cases.
- g. Make the initial OSD Component decision as to the employee's choice of a representative. . -.
- h. Provide a copy of the grievance examiner's report of findings and recommendations to the employee and the employee's representative.

2. Supervisors shall:

- a. Provide this Instruction to employees.
- b. Accept and attempt to resolve informal grievances objectively and equitably within the specified time limit.
- c. Record the date when an informal grievance begins and ends.
- d. Notify employees within 5 calendar days of their decision on informally presented grievances and advise them of their right to file a formal grievance.

3. Deciding Officials shall:

- a. Accept with the concurrence of the Director, P&S, WHS or the CPO, Joint Staff, a formal grievance.
- b. Consider and process the formal grievance in accordance with this Instruction, attempting to resolve it in a manner acceptable to the employee, and notifying the employee, in writing, of his or her decision within the specified time limits.

4. The Grievance Examiner shall:

- a. Establish an employee grievance file.
- b. Eliminate from consideration all matters not covered under the grievance system.
- c. Conduct an inquiry of a nature and scope appropriate to the issues involved in the grievance.

d. Upon completion of the inquiry, make all documents available to the employee and the employee's representative for review and comment.

e. Prepare and submit a report of findings and recommendations to the Component head through the Director, P&S, WHS.

#### G. GRIEVANCE

1. Employee Rights. An employee or a group of employees is entitled to present a grievance free from restraint, interference, coercion, discrimination, or reprisal under the system in this Instruction, and management must accept it and promptly consider a grievance if it is properly presented.

a. In presenting a grievance, the employee has the right to be accompanied, represented, and advised by a representative chosen by the employee. The representative is also assured freedom from restraint, interference, coercion, discrimination, or reprisal. -

b. Should the Director, P&S, WHS or the CPO, Joint Staff, disallow the employee's choice of representative, the employee may challenge the decision with the head of the OSD Component or a designee. The employee shall obtain a decision before proceeding with the grievance. The decision of the head of the OSD Component or designee shall be made not later than 10 days after receipt of the employee's challenge. The decision shall be final.

c. If the employee is otherwise in an active duty status, the employee shall be allowed a reasonable amount of official time to present the grievance. If the chosen representative is an employee covered by this Instruction who would otherwise be on active duty, the representative also shall be allowed a reasonable amount of official time for the presentation of the grievance.

d. The employee, in presenting the grievance, is entitled to communicate with and seek information from:

(1) The Directorate, P&S, WHS, or the Civilian Personnel Branch, Joint Staff.

(2) The Director of Equal Employment Opportunity (DEEO), the Equal Employment Opportunity Officer (EEOO), the Federal Women's Program Manager (FWPM), the Hispanic Employment Program Manager (HEPM), the Black Employment Program Manager (BEPM), other designated Special Emphasis Program (SEP) managers, or an EEO Counselor.

(3) The General Counsel, DoD, or a designee, who serves as Counselor to employees on matters involving conflict of interest and standards of conduct.

(4) A supervisor or management official of a higher rank than the employee's immediate supervisor.

e. The employee may cancel the grievance at any time.

2. OSD Component Rights. The Director, P&S, WHS or the CPO, Joint Staff, has the right to disallow the employee's choice of an individual as a representative which would:

a. Conflict with priority needs of the OSD Component or give rise to unreasonable costs to the government.

b. Result in a conflict of interest or conflict of position.

3. Cancellation or Termination of Grievance Processing. A supervisor shall cancel an informal grievance when requested by the employee. A deciding official or OSD Component head shall cancel or terminate a formal grievance only:

a. At the employee's request.

b. When the employee's employment terminates, unless the relief sought can be granted after the termination of his or her employment.

c. Upon the employee's death, unless the grievance involves pay.

d. For failure to prosecute, if the employee does not furnish the required information and duly proceed with the advancement of the grievance.

#### H. INFORMAL GRIEVANCE PROCEDURE

##### 1. Presenting the Grievance

a. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented within 15 calendar days of the date of that act or occurrence, or of the date the employee became aware of it.

b. An employee may present a grievance orally or in writing for informal consideration. The employee must identify and clarify the basis for the grievance and specify the relief sought, which must be directly personal to the employee. The employee must advise the official hearing the presentation of the name of the representative, if any.

c. The initial presentation normally is made to the immediate supervisor; however, it may be made to an official of higher rank. When the grievance concerns a decision made by an official of higher rank than the immediate supervisor, the initial presentation shall be made to that official or one of still higher rank. Grievances may not be initially submitted to the official who makes the final decision (deciding official).

d. The informal procedure must be completed before a formal grievance can be accepted. Exception: An employee may present a grievance directly under the formal procedures if it concerns an action effected through an advance written notice, with right to reply and contest the action, and a final written decision.

e. A PMS or PMRS employee who receives a performance rating of less than fully successful may grieve such rating under the procedures described in subsection K.2.

2. Consideration. The supervisor who receives the grievance shall discuss it with the employee and attempt to resolve it. The supervisor shall notify

the employee of the action taken within 5 calendar days and inform the employee that if the solution is not satisfactory, the employee may present a formal grievance.

#### I. FORMAL GRIEVANCE PROCEDURE

1. Presenting the Grievance. If the employee is not satisfied with the results of the informal procedure, the employee may present a formal grievance within 10 days of the date of notification of the results of the supervisor's or other management official's effort to resolve the informally presented grievance. The grievance must be in writing and be submitted to the deciding official through the Director, P&S, WHS or the CPO, Joint Staff. The grievance must include:

- a. Name of employee and employee's representative, if any.
- b. Position title and grade. . .
- c. The organizational entity to which assigned.
- d. A clear statement of the issue, including sufficient detail to identify and clarify the matter being grieved (times, dates, names, places, and other pertinent data).
- e. A specific statement of the relief sought that must be directly personal to the employee.

#### 2. Processing the Formal Grievance.

a. Rejection of the Grievance. If the grievance is not properly presented, the Director, P&S, WHS or the CPO, Joint Staff shall:

(1) Return it to the employee for correction and resubmission within a specified time limit.

(2) Reject it as untimely.

(3) Reject it as an inappropriate matter for consideration under this Instruction.

b. Acceptance of the Grievance. If the grievance is properly presented, the Director, P&S, WHS or the CPO, Joint Staff shall forward it to the deciding official.

c. The deciding official shall:

(1) Attempt to resolve the formally presented grievance.

(2) Notify the employee in writing of his or her decision and any action to be taken within 10 calendar days of receipt.

(3) Include in the written decision that if the resolution of the grievance is unacceptable, the employee must notify the official within 5 calendar days, and may request the assignment of a grievance examiner.



(4) When a timely notification of nonacceptance from the employee is received with a request for assignment of a grievance examiner, forward the grievance and pertinent correspondence to the Director, P&S, WHS or the CPO, Joint Staff.

d. Assignment of the Grievance Examiner. The Director, P&S, WHS, shall assign a properly selected and trained grievance examiner.

e. Grievance Examiner's Inquiry and Report. The grievance examiner shall conduct an inquiry into the grievance, complete the grievance file; and submit the report to the OSD Component head through the Director, P&S, WHS, within 30 calendar days of the grievance examiner's assignment to the inquiry.

(1) Scope of Inquiry. The grievance examiner shall conduct an inquiry which, at the examiner's discretion, may consist of:

- (a) Securing documentary evidence;
- (b) A personal interview;
- (c) A group meeting;
- (d) A hearing; or
- (e) Any combination of the above.

(2) The Hearing. If a hearing is held, it shall be conducted by a grievance examiner to bring out pertinent facts and develop pertinent records.

(a) Attendance. The hearing is not open to the public or the press. Attendance shall be limited to those persons determined by the examiner to have a direct connection with the grievance or the right to attend. The examiner may exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.

(b) Hearing Procedures. Rules of evidence are not strictly applied, but the examiner shall rule out irrelevant or unduly repetitious testimony. The examiner shall make decisions on the admissibility of evidence or testimony. Testimony shall be given under oath or affirmation and the parties provided an opportunity to cross-examine witnesses who appear and testify.

(c) Witnesses. Both parties are entitled to produce witnesses and to introduce signed, sworn statements or letters of interrogatory.

1 Employees to whom this Instruction applies are in a duty status during the time they are made available as witnesses and shall be free from restraint, interference, coercion, discrimination, or reprisals in presenting their testimony.

2 Employees to whom the provisions of this Instruction apply normally shall be made available as witnesses, when requested by the examiner. The Director, P&S, WHS or the CPO, Joint Staff shall arrange for the appearance of employee witnesses.

3 The Director, P&S, ~~WHS~~ or the CPO, Joint Staff shall notify the examiner and justify, in writing, when it is determined that it is administratively impracticable to comply with the examiner's request for the appearance of an employee witness. If the examiner deems the justification inadequate, it may be construed that the absent witness would have given testimony unfavorable to the employing OSD Component.

(d) Record of the Hearing. The examiner shall determine how the hearing is reported.

1 When a verbatim transcript is ordered, the Director, P&S, ~~WHS~~, shall make the necessary arrangements.

2 When the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made by the examiner and submitted to both parties for acceptance or written comment.

a If the examiner and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary. Such exceptions must be received within reasonable time limits set by the examiner.

b Timely written exceptions and the summary constitute the report of the hearing.

(e) Grievance File. The examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing, when held.

1 Upon completion of the inquiry, the examiner shall make the grievance file available to the employee and the representative for review and comment.

2 Written comments received within a reasonable time limit, as set by the examiner, shall be incorporated in the file.

(f) Grievance Examiner's Report. The examiner shall prepare a report of the findings and recommendations and submit it, with the grievance file, to the OSD Component head through the Director, P&S, ~~WHS~~. The Director, P&S, ~~WHS~~, shall send the report to the Component head. Reports for grievants employed in the Joint Staff shall be forwarded to the Component head through the CPO, Joint Staff.

### 3. Decision on the Grievance

a. The OSD Component head shall accept and direct the implementation of the examiner's recommendations, and notify the employee and representative in writing within 20 calendar days of the date the Component head receives the report, except that:

(1) If the Component head decides to grant the relief sought by the employee, the decision shall be issued accordingly, without regard to the examiner's recommendation.

(2) If the Component head determines that the examiner's recommendations are unacceptable, the Component head shall transmit the grievance file with a specific statement of the basis for that determination to the Deputy Secretary of Defense for decision, unless there is an intervening level of management between the Component head and the Deputy Secretary of Defense. In that case, the file shall be forwarded through the intervening management official who may accept the grievance examiner's recommendation and issue the written decision or send the case file to the Deputy Secretary of Defense for decision. A copy of the Component head's statement shall be furnished to the employee and representative.

b. The Deputy Secretary of Defense shall issue a written notice of the decision. The notice must include a specific statement of findings on all issues covered by the examiner in the inquiry. The notice shall be sent to the employee with a copy for the representative and one copy incorporated in the grievance file.

c. The final decision must be issued within 90 days following initiation of the informal procedure.

4. Records. The grievance file shall be sent to, and retained by, the Director, P&S, WHS or the CPO, Joint Staff, as provided by OPM regulations.

J. MERIT PROMOTION GRIEVANCE PROCEDURES

1. These procedures are applicable only for employees of the OSD Component who believe they were not rated and ranked properly in a merit promotion action.

2. The presentation and processing of a grievance under this section shall be in accordance with subsections H. and I. of this Instruction, with the following exceptions:

a. The informal presentation shall be made to the Chief, Staffing Division, or Chief, Executive Personnel and Classification Division, P&S Directorate, WHS; or the Civilian Personnel Officer, Joint Staff.

b. If the employee is not satisfied with the results of the informal procedure, he or she may present a formal grievance to the Director, P&S, WHS or the CPO, Joint Staff.

c. The Director, P&S, WHS, shall obtain the services of a personnel official with expertise in the examining function from outside the OSD Component to serve as an examiner. This person may not be involved in the merit promotion action, and may not occupy a position subordinate to any official who recommended, advised, made a decision on, or was otherwise involved in the merit promotion action.

d. The examiner shall conduct an inquiry into the grievance, complete the grievance file, and submit his or her report of findings and recommendation to the Director, P&S, WHS, within 30 calendar days of the date the examiner received the case.

e. The Director, P&S, WHS or the CPO, Joint Staff shall fully consider the examiner's recommendations, and notify the employee and representative of the decision within 20 calendar days of the date the report is received. The notice to the employee shall advise him or her that the decision is final and not subject to further review or appeal.

K. PMS AND PMRS PERFORMANCE RATING GRIEVANCE PROCEDURE

1. These procedures apply only to a PMS or PMRS employee's final performance appraisal rating of less than fully successful that has been properly certified by the employee's OSD Component Head or other appropriate management official (Administrative Instructions No. 42 and 63, references (h) and (i)).

2. Presenting the Grievance. A PMS or PMRS employee who is dissatisfied with his or her performance rating of less than fully successful, which has been certified by an OSD Component Head or other appropriate management official may grieve such rating. The grievance must be presented within 15 calendar days of the date the employee was notified of the rating. The grievance must include:

a. Name of the employee, position title, grade, and the organizational entity to which assigned.

b. Name of the employee's representative, if any.

c. Date the employee was notified of his or her performance rating.

d. A complete copy of the employee's Performance Appraisal (DD Form 2264 or DD Form 2240) and related documents.

e. A clear and concise statement of the specific reason why the employee disagrees with the rating, based on his or her demonstrated performance in relation to the performance standards developed for each critical element at issue.

f. The performance rating the employee believes is warranted based on his or her demonstrated performance in relation to the performance standards developed for each critical element at issue. Sufficient detail must be included to show how, why, and in what manner the employee's performance warrants a higher rating than the one received, based on the demonstrated performance for each critical element.

g. The grievance must be presented to the official who certified the performance rating, through the Director, P&S, WHS or the CPO, Joint Staff.

3. Processing the Grievance. The procedures in subsections 1.2 through 1.4. above, shall apply.

L. EFFECTIVE DATE

This Instruction is effective immediately.



D. O. Cooke  
Director

Enclosure - 2

1. References
2. Definitions

REFERENCES, continued

- (d) Administrative Instruction No. 9, "Processing Complaints of Discrimination, " January 11, 1979
- (e) Administrative Instruction No. 71, "Reduction in Force, " August 20, 1981
- (f) Administrative Instruction No. 66, "Position Classification Appeals," June 18, 1968
- (g) Executive Order 10450, "Security Requirements for Government Employment, " April 27, 1953, as amended
- (h) Administrative Instruction No. 42, "Performance Management and Recognition System (PMRS)," August 27, 1987
- (i) Administrative Instruction No. 63, "Performance Management System (PMS) for General Schedule and Wage System Employees," September 8, 1987

DEFINITIONS

1. Bargaining Unit Employee. An employee included in an appropriate exclusive bargaining unit, as determined by the Federal Labor Relations Authority, for which a labor organization has been granted exclusive recognition.

2. Deciding Official. An official at a higher administrative level than any official who took an action or made a decision which is an issue in the grievance and who was not involved in the attempt to resolve the grievance informally, except when the Secretary of Defense has been involved.

3. Employee. Includes a nonbargaining unit employee or any former employee for whom a remedy can be provided.

4. Grievance. A *request* by an *employee* or by a group of employees for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee or employees which is under the control of OSD Component management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against the employee.

5. Grievance Examiner. A person assigned to conduct an investigation or hearing--or both--concerning a grievance. The grievance examiner must be a person who was not involved in the matter being grieved, and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or otherwise was involved in the matter being grieved.

6. Grievance File. A file that contains all documents related to the grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of a hearing when one is held, statements made by the parties to the grievance, and the decision.

7. Personal Relief. A remedy that benefits the employee and that management has the authority to grant. Personal relief may not include a request for disciplinary or other action affecting another employee.